

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Station
(Chillicothe, Ohio and
Ashville, Ohio)

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MM Docket No. 99-322
RM-9762

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JUN 14 2002

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**SUPPLEMENT TO COMMENTS FILED IN SUPPORT OF NOTICE OF PROPOSED
RULE MAKING**

Secret Communications II, LLC ("Secret"), licensee of FM broadcast station WFCB (formerly WKKJ), Chillicothe, Ohio ("WFCB" or the "Station"), by its attorneys, hereby supplements its Comments filed on December 17, 1999 in support of the Commission's Notice of Proposed Rule Making released on October 29, 1999 ("NPRM"). The purpose of this Supplement is to inform the Commission that, pursuant to Commission authorization in FCC File No. BMPH-20011120ABH, Secret has relocated WFCB's transmitter and accordingly, the Commission should now use the coordinates of such new transmitter site for purposes of this rule making. Secret respectfully requests the Commission promptly to adopt the proposal contained in its NPRM based on these new coordinates, terminate the proceeding, and issue its Report and Order to that effect.

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BACKGROUND

1. On April 26, 1999, Secret filed with the FCC a Petition for Rule Making to amend the FM Table of Allotments by reallocating Channel 227B from Chillicothe, Ohio to Ashville, Ohio and to modify WFCB's license accordingly (the "Petition").

2. The Mass Media Bureau released its NPRM on October 29, 1999. Secret filed Comments in support of the proposal on December 17, 1999, reaffirming its commitment to implement the proposed change, and on December 20, 1999 the licensees of several Columbus, Ohio radio stations (the "Licensees") filed an opposition (the "Objection"). Secret filed Reply Comments on January 4, 2000.

3. In their Objection, the licensees stated accurately that Secret had not begun to build the antenna structure at the site authorized in its then-outstanding construction permit, see FCC File No. BPH-981201IA, which served as the reference coordinates for Secret's rule making proposal. These licensees suggested that this somehow showed that Secret never intended to construct pursuant to the authorization, but rather would seek after completion of the rule making a transmitter site much closer to Columbus. While Secret pointed out that these claims were purely speculative, it explained in its Reply that the delay in construction was not caused by any lack of desire or intent to build the authorized facilities, but rather by the fact that the Commission had not yet granted Secret's application to modify the construction permit in FCC File No. BMPH-990820IF.

4. That modification application was subsequently granted on April 7, 2000. However, an ongoing local zoning matter continued to prevent Secret from beginning construction of the modified facilities. Secret notified the Commission (and counsel to the Licensees) of these complications in a letter dated November 16, 2000, and requested the Commission to defer

further action in this proceeding until Secret considered its options for getting its improved Station facilities on the air as soon as possible. Secret followed up with a letter dated January 16, 2001, informing the Commission and the Licensees that the zoning issues that were delaying its construction of the Station's facilities had still not been satisfactorily resolved.

5. Because there appeared to be no end in sight to the court proceeding considering these zoning issues, Secret decided to file an application to modify the construction permit to specify a new transmitter site free of zoning complications so that it could construct improved facilities before the Station's construction permit expired on March 5, 2002. Accordingly, Secret filed a modification application with the Commission on November 20, 2001. The Commission granted the application and issued a modified construction permit on January 25, 2002. Secret has constructed the authorized facilities at the newly authorized transmitter site, and on March 4, 2002, it filed an application for Program Test Authority and a covering license for its new facilities. The license application was granted by the Commission on March 29, 2002. See FCC File No. BLH-20020304AFX.

DISCUSSION

6. Because the Station's improved facilities have now been constructed and the station is operating full-time from that transmitter site, the ongoing zoning matter is no longer relevant to this proceeding, and it is therefore respectfully requested that the Commission resume its processing of Secret's Petition.

7. Since WFCB is now operating from its newly authorized transmitter site, it is appropriate to ask that the reference coordinates for this rule *making be those of the new* transmitter site. As shown in Exhibit A attached hereto, the Station's predicted authorized 70 dBu signal continues to cover Chillicothe. WFCB also provides full city-grade coverage to

Ashville with its new facilities. See Exhibit A. No other transmitter site is being proposed herein. Accordingly, Secret hereby modifies the reference coordinates for its proposal from 39° 37' 17" NL, 82° 53' 13", as set forth in the NPRM, to 39° 12' 22" NL, 83° 06' 38", consistent with the coordinates for the Station's new transmitter site as set forth in Exhibit A hereto.

8. As demonstrated in Exhibit A, from the new reference coordinates, the proposed allotment will still be mutually exclusive with the Station's present assignment, and thus, pursuant to Section 1.420(i) of the Commission's Rules, the Commission may still reallocate Channel 227B without granting an opportunity to other parties to file competing expressions of interest.

9. Further, using the new reference coordinates, it is still true that the proposal will result in a preferential new arrangement of allotments under the Commission's guidelines by providing a first local aural service to Ashville, which undisputedly qualifies as a "community" worthy of its own first local transmission service, and a grant of the proposed change is still in the public interest. As set forth in Exhibit A, Chillicothe will continue to maintain an ample number of local transmission services, and it will continue to be well served from a reception service standpoint.

10. As demonstrated in Exhibit A, Secret is not moving WFCB into a new urbanized area from its facilities. Neither Chillicothe nor Ashville is located within any Urbanized Area, Ashville is an independent community, and, as demonstrated in Exhibit A, the proposed allotment, as the modified reference point, still will not place a 70 dBu signal over 50% or more of the area and population of the Columbus Urbanized Area. In fact, as shown in the map attached as Figure 1 to Exhibit A, the proposal as modified is actually further from and will cover less of the Columbus Urbanized Area than the coordinates initially proposed in Secret's

Petition. Thus, the proposal is not subject to a “Tuck” interdependence showing, as the Bureau correctly concluded initially, and Ashville still should not be credited with the aural broadcast transmission services licensed to the communities in the Columbus Urbanized Area.

11. In addition, because no other transmitter site is being proposed, no new short spacings will be created, no existing short spacings will be exacerbated, and there will be no increase in the potential for interference between currently short-spaced stations. Thus, WFCB’s grandfathered short-spacing situation with respect to WAKW(FM) will be maintained and is not an impediment to a grant of the instant proposal. Also because no transmitter site relocation is being proposed herein, a grant of this proposal will not result in any listeners losing a broadcast reception service.

12. Secret’s investment in and construction of the Station’s new facilities highlights the speculative nature of the licensees’ claims regarding Secret’s intentions for its future operations of the Station, and demonstrates why the Commission should not rely on such unfounded theories in considering Secret’s proposal. Rather than moving in closer toward Columbus, as the licensees surmised Secret may do, Secret has completed construction at a site that is farther from Columbus than initially proposed. As set forth in Secret’s Reply, the Commission should consider the facts before it. When it does so here, it will see that Secret’s proposal will further the goals set by the Commission in establishing the FM allotment scheme by allowing Ashville its first local transmission service as proposed by Secret, and the Petition should therefore be granted.

13. Should the Commission adopt Secret’s proposal, as modified, and *reallocate Channel 227B* from Chillicothe to Ashville, Ohio, Secret hereby reaffirms that it intends to promptly file

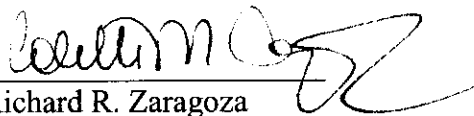
any appropriate application(s) for, and to implement the allotment of, Channel 227B at Ashville, Ohio.

CONCLUSION

Based on the foregoing, Secret Communications II, LLC respectfully requests the Commission to promptly resume its consideration of Secret's proposal as modified herein, deny the Objections, adopt as a final matter Secret's proposal contained in the NPRM, amend the FM Table of Allotments to reallocate Channel 227B from Chillicothe, Ohio to Ashville, Ohio, and modify WFCB's license accordingly.

Respectfully submitted,

SECRET COMMUNICATIONS II, LLC

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Dated: June 14, 2002

EXHIBIT A

**DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND**

**ENGINEERING EXHIBIT
IN SUPPORT OF
PETITION FOR RULEMAKING
MASS MEDIA DOCKET NUMBER 99-322
SECRET COMMUNICATIONS II, L.L.C.
STATION WFCB(FM)
CHILlicothe, OHIO**

CH 227B 33 KW (MAX-DA, H&V) 182 METERS

June 13, 2002

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**ENGINEERING EXHIBIT
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**ENGINEERING EXHIBIT
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ENGINEERING STATEMENT

INTRODUCTION

The engineering exhibit, of which this statement is part, was prepared on behalf of Secret Communications II, L.L.C. (Secret) to provide updated information in support of the Petition For Rule Making (PRM) in Mass Media Docket Number 99-322. The instant PRM requests amendment of the Federal Communications Commission (FCC) Table of Allotments, Section 73.202 of the FCC Rules, by deleting channel 227B at Chillicothe, Ohio, and adding channel 227B at Ashville, Ohio. The PRM also requests the concomitant modification of the license of commercial FM station WFCB to specify operation on channel 227B at Ashville.

WFCB(FM) FACILITIES

WFCB is licensed (FCC File Number BLH-20020304AFX) to operate on channel 227B (93.3 megahertz (MHz)) at Chillicothe with maximum effective radiated power (ERP) of 33 kilowatts (kW), circularly polarized, and antenna radiation center height above average terrain (HAAT) of 182 meters, at a site identified by geographic coordinates 39° 35' 30" North Latitude, 83° 06' 38" West Longitude, referenced to the 1927 North American Datum (NAD 27). WFCB began operation in 1961.

The licensed WFCB facilities are grandfathered short-spaced FM facilities, as defined in Section 73.213(a) of the FCC rules, with respect to co-channel commercial FM station WAKW, Cincinnati, Ohio. WAKW is licensed (FCC File Number BLH-891011KD) to operate on channel 227B with maximum ERP of 50 kW, horizontally polarized; 49 kW, vertically polarized; and antenna radiation center HAAT of 150 meters, at a site identified by geographic coordinates 39° 12' 22" North Latitude, 84° 33' 23" West Longitude (NAD 27). WAKW also began operation in 1961.

The minimum distance separation required by Section 73.207 of the FCC Rules between co-channel Class B FM stations is 241 kilometers.

The distance between the licensed WFCB site and the licensed WAKW site is 151 kilometers. Since both WAKW and WFCB were authorized prior to November 16, 1964, and have remained continuously short-spaced since that time, WFCB and WAKW are considered grandfathered short-spaced stations under Section 73.213(a) of the FCC rules.

BASIS FOR PROPOSAL

Since WFCB is a grandfathered short-spaced station, Secret's proposal to reallocate Channel 227B from Chillicothe, Ohio, to Ashville, Ohio, and modify WFCB's license to specify the principal community of Ashville must meet several technical tests. These tests are ...

Principal Community Coverage

Figure 1 of this engineering exhibit is a portion of the United States Geological Survey (USGS) Ohio 1:500,000 scale state map upon which the predicted 70 dB μ (3.16 mV/m) field strength contour for the licensed WFCB facility is depicted. Also drawn on the map of Figure 1 is the US Census boundary for the city limits of Ashville, Ohio, which is clearly well within the predicted licensed WFCB 70 dB μ field strength contour.

Creation of New or Exacerbation of Existing Short Spacing

Since no change in the licensed WFCB transmitter site is proposed in the instant petition, no new short spacings are created, no existing short spacings are exacerbated, and the potential for interference between the currently short-spaced stations is not increased.

Local Aural Broadcast Services

In addition to WFCB, there are six fulltime aural broadcast services currently licensed to Chillicothe, Ohio:

- | | |
|--|---|
| 1. WCHI(AM), 1350 kHz
FCC Facility ID Number 74225
1.0 kW-LS, 0.028 kW-N, ND
39° 19' 13" NL; 82° 57' 03" WL | 4. WVXC(FM), Ch. 207A
FCC Facility ID Number 74298
2.50 kW (V), 107 m
39° 20' 45" NL; 83° 11' 15" WL |
| 2. WBEX(AM), 1490 kHz
FCC Facility ID Number 52041
1.0 kW-LS, ND
39° 19' 52" NL; 82° 59' 49" WL | 5. WOHC(FM), Ch. 211A
FCC Facility ID Number 65503
2.00 kW (V), 120 m
39° 20' 45" NL; 83° 11' 15" WL |
| 3. WKKJ(FM), Ch. 232B1
FCC Facility ID Number 74224
25 kW (Max-DA,H&V), 81 m
39° 19' 52" NL; 82° 59' 49" WL | 6. WOUH(FM), Ch. 220A
FCC Facility ID Number 50143
0.75 kW (V), 198 m
39° 19' 46" NL; 82° 48' 08" WL |

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Station WFCB(FM), Chillicothe, Ohio

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Other Aural Broadcast Services

Since no change in the authorized WFCB facilities is proposed, WFCB will continue to provide aural service¹ to Chillicothe, Ohio. In addition to the adequate number of aural services that will remain in Chillicothe if channel 227B is reallocated to Ashville, Ohio, as proposed herein, at least 7 other licensed facilities provide aural service to Chillicothe, Ohio:

- | | |
|---|--|
| 1. WXIZ(FM), Ch. 265A
Waverly, OH
FCC Facility ID Number 14651
0.92 kW (H&V), 152 m
39° 13' 17" NL; 82° 59' 33" WL | 5. WTVN(AM), 610 kHz,
Columbus, OH
FCC Facility ID Number 11269
5.0 kW-U, DA-N
39° 52' 26" NL; 82° 58' 36" WL |
| 2. WPAY-FM, Ch. 281C
Portsmouth, OH
FCC Facility ID Number 54813
100 kW (H&V), 305 m
38° 43' 20" NL; 83° 00' 05" WL | 6. WRFD(AM), 880 kHz
Columbus-Worthington, OH
FCC Facility ID Number 58630
23 kW-LS, 6.1 kW-CH, ND
39° 56' 31" NL; 83° 01' 20" WL |
| 3. WXIC(AM), 660 kHz
Waverly, OH
FCC Facility ID Number 14652
1.0 kW-LS, ND
39° 07' 50" NL; 83° 00' 46" WL | 7. WOSU(AM), 820 kHz
Columbus, OH
FCC Facility ID Number 66186
5.0 kW-LS, 0.79-CH, DA-N
40° 01' 44" NL; 83° 03' 22" WL(D)
39° 54' 35" NL; 83° 03' 23" WL(N) |
| 4. WKRC(AM), 550 kHz
Cincinnati, OH
FCC Facility ID Number 29737
5.0 kW-LS, 1.0 kW-N, DA-2
39° 00' 29" NL; 84° 26' 39" WL | |

¹ A location is considered to receive aural service if the location is within the predicted 0.5 millivolt per meter (mV/m) field strength contour for AM stations or the predicted 1.0 mV/m field strength contour for FM stations.

Figure 2 of this Engineering Exhibit is a portion of the USGS Ohio 1:500,000 scale state map upon which the predicted service contours for the licensed facilities specified above are depicted. Also drawn on the map of Figure 2 is the US Census boundary for the city limits of Chillicothe, Ohio, which are clearly within the predicted service contours of the 14 licensed aural services facilities reported herein to provide aural service to Chillicothe, Ohio.

WFCB(FM) COVERAGE IN COLUMBUS, OHIO URBANIZED AREA

Drawn on the map of Figure 1 of this engineering exhibit, a portion of the USGS Ohio 1:500,000 scale state map, is the 1990 US Census² boundary of the Columbus, Ohio, Urbanized Area. Based on the data contained in the 1990 Ohio US Census of Population and Housing, 945,237 persons reside within the 898.8 square kilometers contained within the Columbus, Ohio, Urbanized Area boundary. Using a computer program that enumerates the population of those census divisions with centroids included within the specified contour or boundary, there are 12,344 persons, 1.3 per cent of the total population of the Columbus, Ohio, Urbanized Area, residing within the predicted authorized WFCB facility 70 dB μ contour. Using a

computer program which estimates the area within a irregular polygon, there are 37.7 square kilometers, 4.2 per cent of the total area of the Columbus, Ohio, Urbanized Area, within the predicted authorized WFCB facility 70 dBμ contour. Clearly, the population and area served within the Columbus Urbanized Area are well below the 50 percent limit. Further, because the population and area served within the Columbus Urbanized Area is so small, use of the 2000 population and area data, if available, is not expected to have a substantial impact on the results of this test.

CONCLUSIONS

The predicted authorized WFCB 70 dBμ principal community contour encloses the proposed principal community of Ashville, Ohio. Because the already short-spaced, licensed WFCB facilities will not be changed as a result of the proposed reallocation of Channel 227B to Ashville, Ohio, no new short spacings will be created, and the existing short spacing to station WAKW, Cincinnati, Ohio, will not be exacerbated. The city of Chillicothe, Ohio, will have six remaining local aural services and will not be deprived of local aural transmission service. Chillicothe, Ohio, will continue

² Urbanized areas based upon the 2000 Census data were not available for use in this engineering exhibit.

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CONSULTING ENGINEERS
OXON HILL, MARYLAND

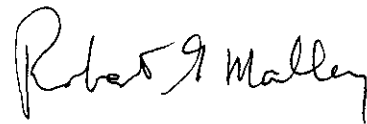
Engineering Statement
Station WFCB(FM), Chillicothe, Ohio

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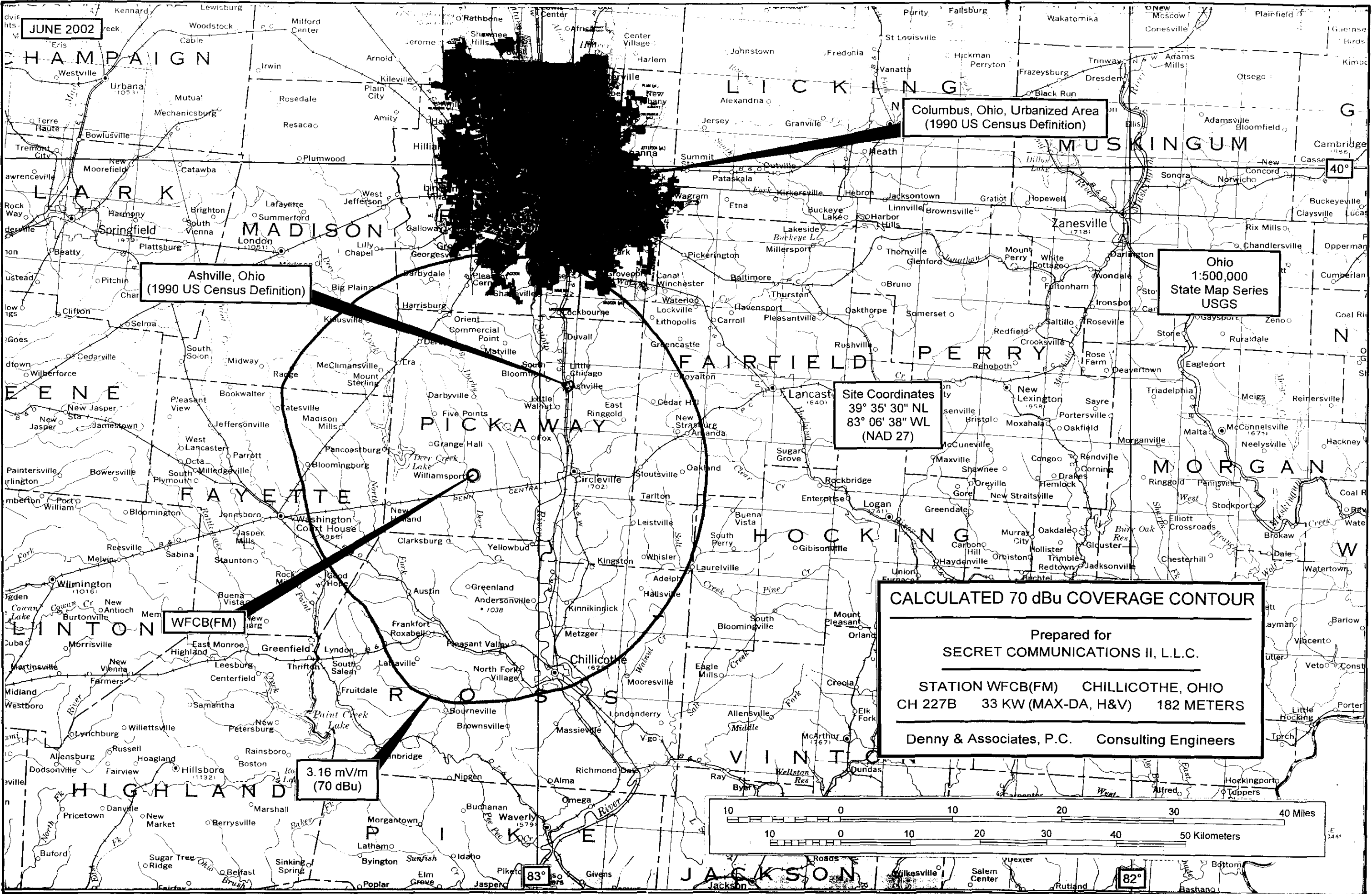
to be well served by at least 14 aural services, including WFCB, providing service to it. The area and population within the predicted authorized WFCB 70 dB μ contour that is inside within the Columbus, Ohio, Urbanized Area comprises less than 50 percent of the total area and population of the urbanized area.

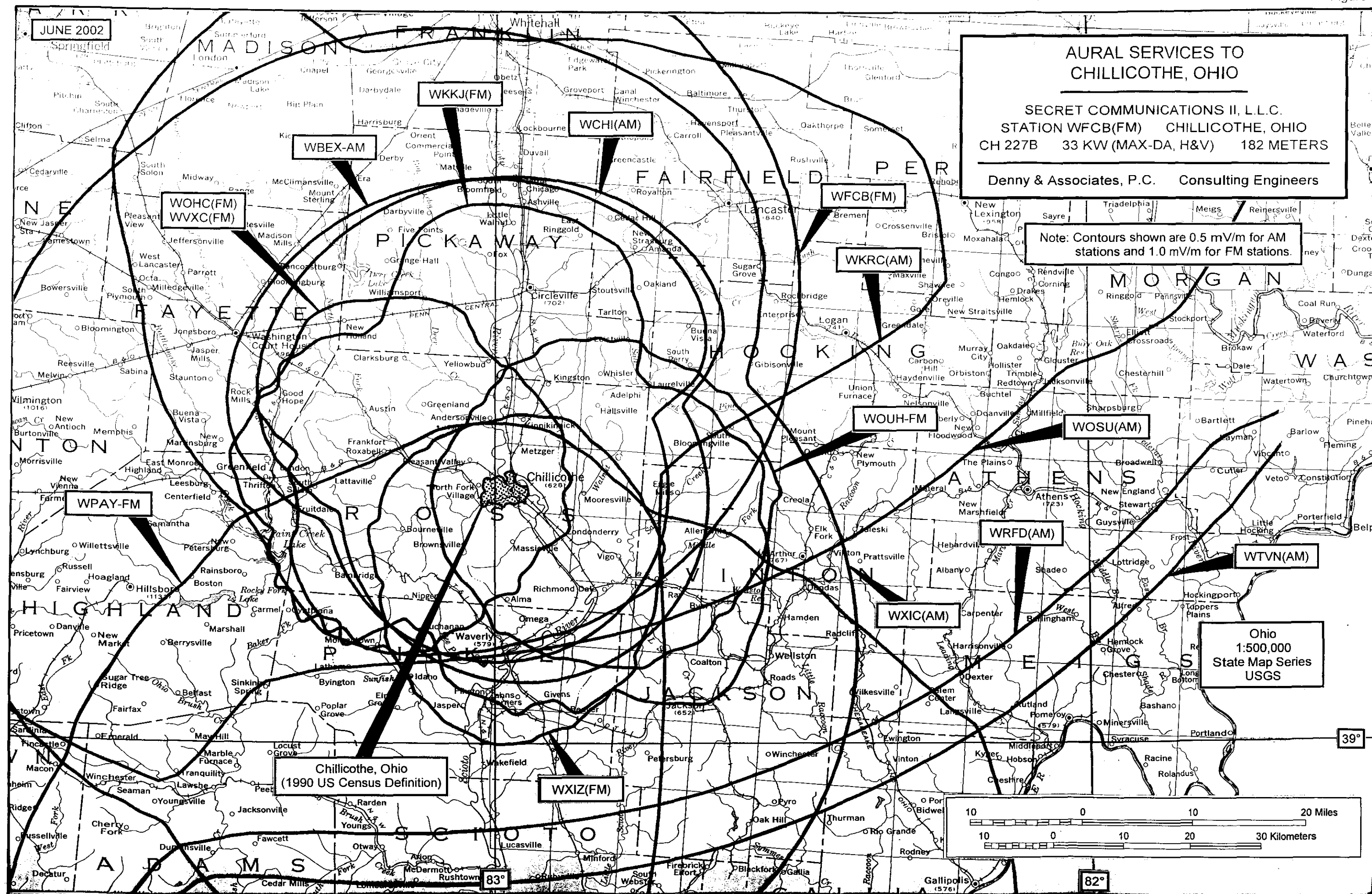
CERTIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on June 13, 2002.



Robert G. Mallery





CERTIFICATE OF SERVICE

I, Renee Williams, a secretary in the law offices of Shaw Pittman, LLP, hereby certify that on the 14th day of June, 2002, copies of the foregoing **"SUPPLEMENT TO COMMENTS FILED IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING"** were sent via First Class U.S. Mail, postage prepaid, to the following:

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*Via Hand Delivery